

## **CASE SUMMARY**

*The People ex rel. Bill Lockyer v. R.J. Reynolds Tobacco Co.*  
No. S121009

In 1999, the R.J. Reynolds Tobacco Company (hereafter Reynolds) distributed promotional packets containing cigarettes at six different events: the Sunset Junction State Fair in Los Angeles; a motorcycle race at the Del Mar Fairgrounds ; an automobile race at the Los Angeles County Fairgrounds; a car show at Verdugo Park in Los Angeles; the San Jose International Beer Festival; and the Long Beach Jazz Festival.

The free packets containing cigarettes were distributed at tents or booths at which Reynolds had posted security guards to check identifications and to preclude minors from entering. Reynolds distributed a total of 108,155 packets to 14,834 adults.

The State of California, through the Attorney General, filed a legal action in the Los Angeles County Superior Court, charging Reynolds with violating section 118950 of the Health and Safety Code. This statute states, among other things, it is unlawful for a business that sells or distributes cigarettes to engage in the “nonsale distribution” of cigarettes to any person in any public building, park, or other public grounds.

Reynolds, in its defense, claimed that section 118950 is not enforceable because the statute conflicts with provisions of the federal Cigarette Labeling and Advertising Act, which states in part that “[n]o requirement or prohibition based on smoking and health shall be imposed under State law with respect to the advertising or promotion of any cigarettes the packages of which are labeled in conformity with [federal law].”

Reynolds also claimed that its conduct was protected by what it calls the “safe harbor provision” of subdivision (f) of section 118950, which states that the prohibition against nonsale distribution of cigarettes does not apply to such distribution on public grounds “where minors are prohibited by law” or on public grounds that are “leased for private functions” at which minors are denied access by a peace officer or a “licensed security guard on the premises.”

The superior court found that on the undisputed facts, the State of California was entitled to judgment as a matter of law. Consequently, the court entered what is know as “summary judgment” against Reynolds, and ordered Reynolds to pay a fine of \$14,826,200.

Reynolds sought appellate review by the California Court of Appeal, challenging the trial court’s rejection of Reynolds’ legal positions and also asserting the amount of the fine was excessive. After the parties filed written papers setting forth their legal positions (called “briefs”) and made oral presentations to the court (called “oral argument”), the Court of Appeal, Second Appellate District, upheld (“affirmed”) the trial court’s judgment.

Reynolds then petitioned for review by the California Supreme Court, which agreed to decide the following issues:

1. Does Health and Safety Code section 118950 conflict with provisions of the federal Cigarette Labeling and Advertising Act that “preempt” states from imposing any “requirement or prohibition based on smoking and health” with respect to “the advertising or promotion” of any cigarettes labeled in conformity with federal law? (In this context, “preempt” means to assume full responsibility over the regulation of a matter and, thus, to preclude others from doing so.)

Reynolds claims that distributing free cigarettes is a means of “promoting” the use of cigarettes and, therefore, federal law preempts state regulation of such conduct, including section 118950.

The Attorney General counters that Congress could not have intended to treat distribution of free cigarettes as a “promotion” under the federal act; otherwise, a state would be barred from prohibiting tobacco companies from distributing free cigarettes to children.

2. Was Reynolds’ conduct protected by the so-called “safe harbor provision” of subdivision (f) of Health and Safety Code section 118950, which permits the nonsale distribution of cigarettes on public grounds leased for private functions at which minors are excluded by licensed security guards?

Reynolds contends its conduct falls within the unequivocal terms of the safe harbor provision.

The Attorney General argues the safe harbor provision does not apply because although minors were excluded from the tents and booths that Reynolds used for its promotional program, minors were not entirely excluded from the other activities – the fair, races, auto show, and festivals – being conducted on public grounds where Reynolds was engaged in the “nonsale distribution” of cigarettes.

3. Does the fine of \$14,826,200 violate constitutional prohibitions against excessive fines and deprivation of due process?

Reynolds asserts it acted in good faith reliance on the safe harbor provision of the statute and there was minimal harm caused by distributing cigarettes to adults; thus, the federal and state Constitutions prohibit the impositions of such a large fine on an entity that did not deliberately violate the law.

The Attorney General contends the good faith of Reynolds is of no consequence because “ignorance of the law is no excuse.”